

Subpart B—Reports Required To Be Made

§ 103.12 Determination by the Secretary.

The Secretary hereby determines that the reports required by this subpart have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings.

[37 FR 6912, Apr. 5, 1972. Redesignated at 61 FR 4331, Feb. 5, 1996 and further redesignated at 65 FR 13692, Mar. 14, 2000. Redesignated at 71 FR 26219, May 4, 2006]

§ 103.15 Reports by mutual funds of suspicious transactions.

(a) *General.* (1) Every investment company (as defined in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a-3) (“Investment Company Act”) that is an open-end company (as defined in section 5 of the Investment Company Act (15 U.S.C. 80a-5)) and that is registered, or is required to register, with the Securities and Exchange Commission pursuant to that Act (for purposes of this section, a “mutual fund”), shall file with the Financial Crimes Enforcement Network, to the extent and in the manner required by this section, a report of any suspicious transaction relevant to a possible violation of law or regulation. A mutual fund may also file with the Financial Crimes Enforcement Network a report of any suspicious transaction that it believes is relevant to the possible violation of any law or regulation, but whose reporting is not required by this section. Filing a report of a suspicious transaction does not relieve a mutual fund from the responsibility of complying with any other reporting requirements imposed by the Securities and Exchange Commission.

(2) A transaction requires reporting under this section if it is conducted or attempted by, at, or through a mutual fund, it involves or aggregates funds or other assets of at least \$5,000, and the mutual fund knows, suspects, or has reason to suspect that the transaction (or a pattern of transactions of which the transaction is a part):

(i) Involves funds derived from illegal activity or is intended or conducted in order to hide or disguise funds or assets derived from illegal activity (includ-

ing, without limitation, the ownership, nature, source, location, or control of such funds or assets) as part of a plan to violate or evade any Federal law or regulation or to avoid any transaction reporting requirement under Federal law or regulation;

(ii) Is designed, whether through structuring or other means, to evade any requirements of this part or any other regulations promulgated under the Bank Secrecy Act, Public Law 91-508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951-1959, and 31 U.S.C. 5311-5314, 5316-5332;

(iii) Has no business or apparent lawful purpose or is not the sort in which the particular customer would normally be expected to engage, and the mutual fund knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction; or

(iv) Involves use of the mutual fund to facilitate criminal activity.

(3) More than one mutual fund may have an obligation to report the same transaction under this section, and other financial institutions may have separate obligations to report suspicious activity with respect to the same transaction pursuant to other provisions of this part. In those instances, no more than one report is required to be filed by the mutual fund(s) and other financial institution(s) involved in the transaction, provided that the report filed contains all relevant facts, including the name of each financial institution and the words “joint filing” in the narrative section, and each institution maintains a copy of the report filed, along with any supporting documentation.

(b) *Filing and notification procedures—*(1) *What to file.* A suspicious transaction shall be reported by completing a Suspicious Activity Report by Securities and Futures Industries (“SAR-SF”), and collecting and maintaining supporting documentation as required by paragraph (c) of this section.

(2) *Where to file.* Form SAR-SF shall be filed with the Financial Crimes Enforcement Network in accordance with the instructions to the Form SAR-SF.

(3) *When to file.* A Form SAR-SF shall be filed no later than 30 calendar

days after the date of the initial detection by the reporting mutual fund of facts that may constitute a basis for filing a Form SAR-SF under this section. If no suspect is identified on the date of such initial detection, a mutual fund may delay filing a Form SAR-SF for an additional 30 calendar days to identify a suspect, but in no case shall reporting be delayed more than 60 calendar days after the date of such initial detection.

(4) *Mandatory notification to law enforcement.* In situations involving violations that require immediate attention, such as suspected terrorist financing or ongoing money laundering schemes, a mutual fund shall immediately notify by telephone an appropriate law enforcement authority in addition to filing timely a Form SAR-SF.

(5) *Voluntary notification to the Financial Crimes Enforcement Network or the Securities and Exchange Commission.* Mutual funds wishing voluntarily to report suspicious transactions that may relate to terrorist activity may call the Financial Crimes Enforcement Network's Financial Institutions Hotline at 1-866-556-3974 in addition to filing timely a Form SAR-SF if required by this section. The mutual fund may also, but is not required to, contact the Securities and Exchange Commission to report in such situations.

(c) *Retention of records.* A mutual fund shall maintain a copy of any Form SAR-SF filed by the fund or on its behalf (including joint reports), and the original (or business record equivalent) of any supporting documentation concerning any Form SAR-SF that it files (or is filed on its behalf), for a period of five years from the date of filing the Form SAR-SF. Supporting documentation shall be identified as such and maintained by the mutual fund, and shall be deemed to have been filed with the Form SAR-SF. The mutual fund shall make all supporting documentation available to the Financial Crimes Enforcement Network, any other appropriate law enforcement agencies or federal or state securities regulators, and for purposes of an examination of a broker-dealer pursuant to §103.19(g) regarding a joint report, to a self-regulatory organization (as defined in sec-

tion 3(a)(26) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(26)) registered with the Securities and Exchange Commission, upon request.

(d) *Confidentiality of reports.* No mutual fund, and no director, officer, employee, or agent of any mutual fund, who reports a suspicious transaction under this part (whether such a report is required by this section or made voluntarily), may notify any person involved in the transaction that the transaction has been reported, except to the extent permitted by paragraph (a)(3) of this section. Any person subpoenaed or otherwise required to disclose a Form SAR-SF or the information contained in a Form SAR-SF, including a Form SAR-SF filed jointly with another financial institution involved in the same transaction (except where such disclosure is requested by the Financial Crimes Enforcement Network, the Securities and Exchange Commission, another appropriate law enforcement or regulatory agency, or, in the case of a joint report involving a broker-dealer, a self-regulatory organization registered with the Securities and Exchange Commission conducting an examination of such broker-dealer pursuant to §103.19(g)), shall decline to produce Form SAR-SF or to provide any information that would disclose that a Form SAR-SF has been prepared or filed, citing this paragraph (d) and 31 U.S.C. 5318(g)(2), and shall notify the Financial Crimes Enforcement Network of any such request and its response thereto.

(e) *Limitation of liability.* A mutual fund, and any director, officer, employee, or agent of such mutual fund, that makes a report of any possible violation of law or regulation pursuant to this section, including a joint report (whether such report is required by this section or made voluntarily) shall be protected from liability for any disclosure contained in, or for failure to disclose the fact of, such report, or both, to the extent provided in 31 U.S.C. 5318(g)(3).

(f) *Examinations and enforcement.* Compliance with this section shall be examined by the Department of the Treasury, through the Financial Crimes Enforcement Network or its delegates, under the terms of the Bank

Secrecy Act. Failure to satisfy the requirements of this section may constitute a violation of the reporting rules of the Bank Secrecy Act and of this part.

(g) *Effective date.* This section applies to transactions occurring after October 31, 2006.

[71 FR 26219, May 4, 2006]

§ 103.16 Reports by insurance companies of suspicious transactions.

(a) *Definitions.* For purposes of this section:

(1) *Annuity contract* means any agreement between the insurer and the contract owner whereby the insurer promises to pay out a fixed or variable income stream for a period of time.

(2) *Bank* has the same meaning as provided in § 103.11(c).

(3) *Broker-dealer in securities* has the same meaning as provided in § 103.11(f).

(4) *Covered product* means:

(i) A permanent life insurance policy, other than a group life insurance policy;

(ii) An annuity contract, other than a group annuity contract; or

(iii) Any other insurance product with features of cash value or investment.

(5) *Group annuity contract* means a master contract providing annuities to a group of persons under a single contract.

(6) *Group life insurance policy* means any life insurance policy under which a number of persons and their dependents, if appropriate, are insured under a single policy.

(7) *Insurance agent* means a sales and/or service representative of an insurance company. The term “insurance agent” encompasses any person that sells, markets, distributes, or services an insurance company’s covered products, including, but not limited to, a person who represents only one insurance company, a person who represents more than one insurance company, and a bank or broker-dealer in securities that sells any covered product of an insurance company.

(8) *Insurance broker* means a person who, by acting as the customer’s representative, arranges and/or services covered products on behalf of the customer.

(9) *Insurance company or insurer.* (i) Except as provided in paragraph (a)(9)(ii) of this section, the term “insurance company” or “insurer” means any person engaged within the United States as a business in the issuing or underwriting of any covered product.

(ii) The term “insurance company” or “insurer” does not include an insurance agent or insurance broker.

(10) *Permanent life insurance policy* means an agreement that contains a cash value or investment element and that obligates the insurer to indemnify or to confer a benefit upon the insured or beneficiary to the agreement contingent upon the death of the insured.

(11) *Person* has the same meaning as provided in § 103.11(z).

(12) *United States* has the same meaning as provided in § 103.11(nn).

(b) *General.* (1) Each insurance company shall file with the Financial Crimes Enforcement Network, to the extent and in the manner required by this section, a report of any suspicious transaction involving a covered product that is relevant to a possible violation of law or regulation. An insurance company may also file with the Financial Crimes Enforcement Network by using the form specified in paragraph (c)(1) of this section or otherwise, a report of any suspicious transaction that it believes is relevant to the possible violation of any law or regulation but the reporting of which is not required by this section.

(2) A transaction requires reporting under this section if it is conducted or attempted by, at, or through an insurance company, and involves or aggregates at least \$5,000 in funds or other assets, and the insurance company knows, suspects, or has reason to suspect that the transaction (or a pattern of transactions of which the transaction is a part):

(i) Involves funds derived from illegal activity or is intended or conducted in order to hide or disguise funds or assets derived from illegal activity (including, without limitation, the ownership, nature, source, location, or control of such funds or assets) as part of a plan to violate or evade any federal law or regulation or to avoid any transaction reporting requirement under federal law or regulation;